

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 1745 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE R.R.JAIN

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

GIRISH BHAGWATPRASAD

Versus

STATE OF GUJARAT

Appearance:

MR PM BHATT for Petitioners

MR SOMPURA AGP for the State

CORAM : MR.JUSTICE R.R.JAIN

Date of decision: 04/04/97

ORAL JUDGEMENT

Heard Mr. P.M Bhatt, learned advocate for the petitioners and Mr. Sompura, learned AGP for the State.

The Order passed by respondent No. 2 on 21st August, 1995 rejecting petitioners' application for exemption under Section 20 (1) of the Urban Land {Ceiling

& Regulation} Act, 1976 [in short- "The Act"] is under challenge in this petition under Article 226 of the Constitution of India. The facts giving rise to this application are as under :-

The petitioners herein made an application for exemption under Section 20 (1) of the Act with respect to land bearing Block No. 49/1, admeasuring about 6 Acres and 20 Gunthas, situated at village-Hanspura, Taluka Daskroi within the urban agglomerations of Ahmedabad. The main ground for making application is that the land in question is used for agricultural activities, and therefore, is not covered by the definition of land-holding and that exemption be given. This application came to be rejected on the following grounds viz.,

- (1) The application for exemption is not in consonance with the provisions of Section 20 as the land is situated in a Zone other than agricultural zone and is required to be declared as excess land;
- (2) That the exemption would not be in public interest;
- (3) The land was not used for agricultural activities and that is used for growing "Nilgiri" plantation which could not be termed as agricultural activities.

Dealing with the last ground of rejection first, the ground stands squarely covered by a judicial pronouncement of Supreme Court as well as different High Courts. The question about definition and scope of agricultural activities and purposes was considered by the Supreme Court in the case of The Commissioner of Sales Tax, Lucknow versus Messrs. M.S Bist & Sons, Nainital, reported in AIR 1980 SC p-169, and even the activities of Tea Plantation was considered as agricultural activities. In a judgment reported in AIR 1982 Karnataka p-99 in the case of Byalappa versus State of Karnataka, cultivation of raising Casuarina trees which though not with spontaneous growth was considered as cultivation, included within the definition of agricultural activities. In a given case, the land may not be in actual cultivation for some reasons but then while considering the question of carrying of agricultural activities and cultivation, the prime question should be not whether in fact the land in question is used for cultivation or not but whether the

land was capable of being used for agricultural purposes. Even this Court {Coram : P.R Gokulakrishnan, CJ & G.T Nanavati, J.} also, in an unreported judgement, delivered in LPA No. 314 of 1987, on 21-9-1987, held that 'there cannot be any difficulty in coming to the conclusion that agricultural operation may also include the planation of 'Nilgiri' trees. Thus the ground is illfounded and does not require recognition and I hold that Nilgiri plantation is agricultural operation.'

Moreover, the evidence on record is eloquent to suggest that the land in question has been in use for cultivation and agricultural activities since 1973-74. The 7/12 abstract produced at Annexure "B" shows that the land was used for cultivation of cotton, bazra, paddy, wheat, etc. Annexure-I goes to show that even from 1984-85 till 1992-93 the land in question is in use for raising 'Nilgiri' plantation and paddy crop, therefore, in my view this ground of rejection is not at all sustainable.

The first ground of rejection cannot be sustained for the simple reason that the evidence on record referred to above and discussed, while dealing with the ground No. 3, amply suggest that the land in question was used for cultivation and agricultural purposes right from 1973-74 onwards till 1992-93. The authority has also overlooked the administrative instructions issued by the Central Government from time to time for dealing with application for exemption under Section 20 (1) of the Act. Guidelines issued by the Central Government vide Circular dated 19th October, 1986 suggest that the State Government may exempt, in public interest, lands which are entered in the land record before the appointed date as may be used for agricultural and are actually used even if their specified in the master plan for the purpose other than agriculture.

Rejection on the ground of 'public interest' without assigning any reasons; in my view, is absolutely a vague ground and reflects arbitrariness. Again, 'public interest' is a relative word and would depend upon the facts and circumstances of the individual case. The respondent No. 2 has not given details as to how the grant of exemption would not be in the public interest. On the contrary, if we look to the application moved by the petitioners, it becomes crystal clear that the petitioners do not want to change the use and are willing to continue for the same purposes ie., for cultivation and agriculture. If the petitioners are not intending to change the use, the question of 'public interest' does

not require any consideration. The question of 'public interest' requires consideration only when the object is to change the purpose and use etc., which may entail some far reaching consequences and effect. Thus, in my view, the impugned order {Annexure "E"} dated 21st August, 1995 cannot be sustained in law and required to be quashed and set-aside. The matter is remanded to the respondent No. 2 for restoration of proceedings and deciding the same for exemption afresh in accordance with law, and in the background of observations made by this Court.

In the result, this petition is allowed. The Order passed by respondent No. 2 {Annexure "E"} dated 21st August, 1995 is hereby quashed and set-aside, and the matter is remanded to Respondent No. 2 for fresh consideration; as directed above, within two months from the date of receipt of writ. Rule is made absolute to that extent with no order as to costs.

Prakash*